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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**
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13 AGUEDA R. ROBBIE and DIANE) 3:08-cv-00220-HDM-RAM
14 LARSEN, Trustees of THE AGUEDA)
15 R. ROBBIE MARITAL TRUST U/A/D)
16 03/18/2003,) FINDINGS OF FACT,
17 Plaintiffs,) CONCLUSIONS OF LAW, AND
18 vs.) DECISION
19)
20 BLANCO RIVER LLC, an Arizona)
limited liability company,)
CHRISTOPHER GREEN,)
Defendants.)
_____)

21 This case was tried before the court without a jury upon
22 stipulation of the parties. The court enters its Findings of Fact,
23 Conclusions of Law and Decision as follows:

24 **FINDINGS OF FACT**

25 This dispute centers around language contained in a promissory
26 note dated April 4, 2006. Plaintiff, Agueda R. Robbie, also known
27 as Eda Robbie, resides in Reno, Nevada and is the Trustee of the
28 Agueda R. Robbie Marital Trust U/A/D dated March 18, 2003.

1 The defendant Blanco River LLC (hereinafter "Blanco River") is
2 an Arizona limited liability company. Defendant Christopher Green
3 was the former manager and a member in Blanco River. The business
4 transaction, the subject of this dispute involves a Blanco River Walk
5 development project in San Marcos, Texas. Investors in the project
6 included family and friends of Christopher Green, Bill Tao, Eda
7 Robbie and Alison Ruday, the step-daughter of Eda Robbie. During
8 late March or early April of 2006, a company named Blanco River was
9 formed to takeover the Blanco River Walk project. The purchase price
10 for the property was 40 million. The seller was James Galloway.

11 Initially, the various individuals described above offered a 20%
12 interest in the project in exchange for a \$1,000,000.00 investment.

13 Because of the limited time frame for acquisition, the parties
14 needed to raise monies immediately and secure a \$250,000.00 down
15 payment on the property. A \$250,000.00 non-refundable deposit had
16 to paid to the seller in order to proceed with the purchase.

17 Eda Robbie agreed to invest the \$250,000.00 from her marital
18 trust in exchange for a 15% equity interest in Blanco River. The
19 parties expected that the \$250,000.00 would be used as the down
20 payment or deposit on the land for the Blanco River Walk project.

21 Christopher Green, the principal shareholder in Blanco River,
22 agreed to give the Agueda R. Robbie Marital Trust a 15% equity
23 interest in the company in exchange for the \$250,000.00 investment.

24 In early April 2006, a draft promissory note for the
25 \$250,000.00 payment by the Agueda R. Robbie Marital Trust was
26 circulated among Burt Heimlich, Christopher Green, and their
27 attorney, Jared McHatton, Alison Ruday, Eda Robbie and Bill Tao.

28

1 The discussions resulted in Christopher Green and Burt Heimlich
2 entering into an agreement to provide the Agueda R. Robbie Marital
3 Trust with an unsecured convertible note that could be exchanged for
4 a 15% ownership equity interest in Blanco River after the operating
5 agreement for Blanco River had been completed and other investors had
6 invested money and become members of Blanco River.

7 A dispute arose between Alison Ruday and Eda Robbie on the
8 appropriate means for using the Agueda R. Robbie Marital Trust for
9 investing the \$250,000.00. The original proposal was that the
10 \$250,000.00 be divided as follows: \$150,000.00 to Eda Robbie and
11 \$100,000.00 to Alison Ruday. Accordingly, a note was prepared by
12 Burt Heimlich reflecting two notes, one payable to Eda Robbie in the
13 amount of \$150,000.00 and the other payable to Alison Ruday in the
14 amount of \$100,000.00.

15 Ultimately, Eda Robbie persuaded the other investors that there
16 was to be only one promissory note made payable to the Agueda R.
17 Robbie Marital Trust in the amount of \$250,000.00. On April 4, 2006,
18 Bill Tao sent an email to Burt Heimlich indicating there should be
19 one \$250,000.00 note payable to the Agueda R. Robbie Marital Trust.
20 He also asked for clarification of the final paragraph of the draft
21 note that the payee would be "getting both \$250,000.00 at closing
22 plus a total representation of 15% equity interest in the project's
23 profit." (Exhibit 25). Tao, on behalf of Eda Robbie, was seeking to
24 clarify that in exchange for the note either being converted to an
25 equity interest in the company or assigned to the company in exchange
26 for an equity interest that the plaintiff would acquire a 15%
27 interest in the project's profit and would also receive the balance
28 of the note at the close of escrow.

1 The final version of the relevant language in the note is the
2 following:

3 "Payee may assign the outstanding balance due payee
4 on this note including any accrued interest not
5 then delinquent into a fifteen percent (15%) pari
6 passu equity interest in Maker or its successors on
7 or before the closing date of the acquisition of
8 Vista del Blanco, Ltd.,, a Texas limited
9 partnership, by Maker or any refinancing, sale or
10 assignment of Maker before June 15, 2006.

11 Based on the assignment of the note and at such
12 closing, refinancing, sale or assignment of the
13 Maker, the Payee will be repaid the outstanding
14 balance due Payee on the note including any accrued
15 interest not then delinquent. In addition, the
16 Payee will be entitled to a fifteen percent (15%)
17 pari pass interest in Blanco River, LLC." (Exhibit
18 1).

19 On or about April 5, 2006, plaintiffs Eda Robbie and Diane Larsen
20 as Trustees of the Agueda R. Robbie Marital Trust and defendant
21 Christopher Green and Burt Heimlich signed the \$250,000.00 promissory
22 note and Eda Robbie wired the \$250,000.00 to a law firm in Arizona to
23 make the deposit and secure the purchase of the land.

24 Christopher Green and Burt Heimlich personally guaranteed the
25 payment of the note. The evidence is clear that Eda Robbie expected,
26 by virtue of her investment, to obtain a 15% ownership interest in
27 Blanco River and in addition, to recover her initial investment of
28 \$250,000.00 in the same manner as all of the other investors from the
returns of the company.

Eda Robbie articulates this position in an email she sent to
Alison Ruday on April 5, 2006 in which she states the following:

"To recap, I committed to Chris that we will take the
position of the 1st 250K, which will provide us with \$9MM
(15%) of the projected profit of the \$60MM) which will be
distributed on or before the project completion in 30
months per my understanding, based on the operating
agreement draft.

1 In reviewing the events of the last 72 hours I want to
2 share with you on how we arrived to a now potentially very
3 healthy return for all of us. When Chris called Bill on
4 Friday to discuss the project, he was asked to assist him
5 in raising the \$250K so the contract can be re-instated to
6 save the deal.

7 I was considering to risk between \$100-150K. The initial
8 offer from Chris for the Pioneer Fund was 5% for \$250K
9 (based on the 20% for the original \$1MM), which he was
10 discussing with Bill.

11 After numerous discussions between Chris and Bill a kicker
12 percentage for the Pioneer Fund was developed as suggested
13 by him, from 2.5, 5, 10% and why finally, why not 15%?

14 This is the reason we have the 15% return on our Pioneer
15 Fund investment. It has also galvanized my decision to
16 take the whole 1st position so I can also give something
17 back to my side of the family who can really use some
18 financial assistance, hence I sent you this morning's eml."
19 (Exhibit 8).

20 It was the clear intent of Eda Robbie, as Trustee, to invest the
21 \$250,000.00 to secure a 15% ownership equity position with the company
22 and not to simply act as an unsecured lender to a new LLC on a
23 relatively speculative venture in Texas.

24 On April 10, 2006, the purchase agreement under the terms of
25 which Blanco River was to acquire the underlying land and use the
26 \$250,000.00 from plaintiff to make the down payment was executed by
27 Christopher Green and Burt Heimlich.

28 In order to move forward with the acquisition of the property,
an operating agreement was prepared by Blanco River and was sent to
Eda Robbie for her signature on April 20, 2006. The original version
of the operating agreement provided for a 9.75% equity interest to Eda
Robbie and a 5.25% equity interest to Alison Ruday. It also listed Eda
Robbie as one of the three managers of Blanco River in addition to
Chris Green and Burt Heimlich. In an email dated May 22, 2006, Eda
Robbie objected to the percentages in the operating agreement and

1 advised that she was entitled to receive a 15% ownership interest for
2 the Agueda R. Robbie Marital Trust and the operating agreement she
3 received improperly divided the ownership interest between Eda Robbie
4 and Alison Ruday.

5 On May 22, 2006, Eda Robbie sent a email to Jared McHatton, who
6 was the attorney who had drafted the operating agreement for Blanco
7 River and stated as follows:

8 "As the legal counsel for Blanco River, LLC, it is your
9 responsibility not to disregard my request being one of the
10 managers and the Trustee of the Marital Trust which loaned
11 \$250,000 to Blanco River, LLC through your firm, which was
12 then used to secure the Purchase Agreement between Blanco
River LLC and Vista del Blanco Ltd. This loan was further
secured by a Promissory Note, which will be sent to you by
legal counsel as soon as you send me the current Operation
Agreement for review." (Exhibit 14).

13 This statement clearly reflects Eda Robbie's intent that once she
14 was satisfied with the operating agreement and the percentages set
15 forth in the operating agreement, if they were consistent with the
16 terms of the promissory note, that she was going to send the note to
17 Blanco River in exchange for her equity interest in the company.

18 Thereafter on June 15, 2006, Eda Robbie received the new version
19 of Blanco River's operating agreement from Christopher Green. In a
20 letter dated June 13, 2006, to Christopher Green, Eda Robbie stated
21 the following:

22 "Dear Mr. Green:

23 This is to notify you, and the Principals and Managers of
24 Blanco River, LLC, that I am acknowledging that the
25 enclosed corrected Blanco River LLC Operating Agreement
26 which comprised of sixty one (61) pages, is the official
and final Operating Agreement for Blanco River, LLC. I
have properly corrected and executed the appropriate pages
as described below on item#1.

27 2. Signatory Pages (1-4 as EML enclosure but with page
28 number 55-58 at the bottom). See corrected page 3/4 or

1 page 57 with the correct Member representation; executed
2 accordingly on June 13, 2006.

3 3. Copies of the Letters from Scarpello and Huss, A
4 Professional Corporation from Mr. A. Christopher Zimmerman,
5 my Trusts Attorney, requesting that Exhibit A of the Blanco
6 River, LLC Operating Agreement reflect the proper
7 assignment of the 15% pari passu interest in the Blanco
8 River, LLC to the FBO The Agueda R. Robbie Marital Trust,
9 U/A/D 03/18/2003, to implement its provisions.

10 4. Promissory Note for \$250K dated April 4, 2006, held by
11 FBO The Agueda R. Robbie Marital Trust U/A/D 03/18/2003.

12 Respectfully,

13 Agueda R. Robbie
14 Trustee, FBO the Agueda R. Robbie Marital Trust U/A/D
15 03/18/2003" (Exhibit 15).

16 At this time, Eda Robbie was acknowledging the assignment
17 provision of the promissory note and returned the original note along
18 with the operating agreement. In doing so, however, she reflected
19 that the operating agreement contained the wrong percentage and should
20 be corrected from the 10.437% equity interest to the proper 15% equity
21 interest reflected under the terms of the promissory note.
22 Nevertheless, she executed the operating agreement and surrendered the
23 note to ensure she would receive an equity interest in Blanco River
24 before the close of escrow.

25 Almost all of the remaining investors signed the June 2006
26 version of the operating agreement and returned it shortly before the
27 June 15th anticipated date for closing the escrow. Under the
28 provisions of the operating agreement that Eda Robbie and the other
investors signed and returned there was a provision for return of the
investments plus interest at the close of escrow when sufficient funds
were on deposit to repay the investors. Specifically the operating
agreement contained the following provision under Paragraph 6.1(a):

1 (a) Return of Initial Capital and Accrued Interest.
2 The initial Capital Contributions and accrued interest,
3 at a rate of 12% per annum from the time of contribution
4 to that of distribution, of those Members who elected to
5 contribute initial capital prior to the closing of the
6 acquisition of Vista del Blanco Ltd and the closing of
7 the acquisition and development loan to be obtained in
8 connection with such acquisition shall be distributed to
9 such Members from the proceeds of the acquisition and
10 development loan at such closing. (Exhibits 16, 51, 52 &
11 54).

12 The transaction did not close on June 15, 2006 and while there
13 was an extension granted to July 15, 2006 and a second extension to
14 July 28, 2006, the escrow never did close.

15 At no time prior to the failed property purchase did the
16 defendant Christopher Green or Blanco River respond to Eda Robbie's
17 last communication on June 13, 2006 in which she requested that the
18 operating agreement be modified to properly reflect the 15% equity
19 interest in the company that she was entitled to receive under the
20 express terms of the promissory note. In fact, the operating
21 agreement which had been sent to her and which she returned with the
22 modifications expressed in the June 13, 2006 letter provided for a
23 10.437% equity interest.

24 Subsequent to the failed property purchase, Eda Robbie executed
25 a K-1 tax form and sought a \$250,000.00 deduction from the income
26 on her taxes.

27 **CONCLUSIONS OF LAW**

28 The first claim Eda Robbie has against the defendants Blanco
River and Christopher Green is for breach of contract. The breach
of contract claim centers on the promissory note entered into
between Eda Robbie as Trustee of the Agueda R. Robbie Marital Trust
and Blanco River. The promissory note was personally guaranteed by

1 Christopher Green and Burt M. Heimlich. Burt Heimlich is deceased
2 and the time expired to bring an action against the estate of Burt
3 Heimlich prior to Eda Robbie pursuing her claims against the
4 defendants in this action. Accordingly, Burt Heimlich is not a named
5 defendant in this lawsuit.

6 The legal issue for determination by the court is whether Eda
7 Robbie assigned all or any portion of her promissory note to Blanco
8 River in exchange for an equity interest in Blanco River. And, if
9 she did so, is she nevertheless entitled to recover against Blanco
10 River and Christopher Green as an unsecured creditor of all or a
11 portion of the note. The note states:

12 "Payee may assign the outstanding balance due payee on
13 this note including any accrued interest not then
14 delinquent into a fifteen percent (15%) pari passu equity
15 interest in Maker or its successors on or before the
16 closing date of the acquisition of Vista del Blanco,
17 Ltd., a Texas limited partnership, by Maker or any
18 refinancing, sale or assignment of Maker before June 15,
19 2006.

20 Based on the assignment of the note and at such closing,
21 refinancing, sale or assignment of the Maker, the Payee
22 will be repaid the outstanding balance due Payee on the
23 note including any accrued interest not then delinquent.
24 In addition, the Payee will be entitled to a fifteen
25 percent (15%) pari pass interest in Blanco River, LLC."
26 (Exhibit 1).

27 Eda Robbie contends that the Agueda R. Robbie Marital Trust is
28 entitled to be repaid the \$250,000.00 under the promissory note plus
interest by Blanco River, which amounts were guaranteed by
Christopher Green, and that in addition, the Agueda R. Robbie
Marital Trust is entitled to a 15% equity interest in Blanco River,
whether or not the plaintiff ever assigned the outstanding balance
due on the agreement or converted the note into an equitable
ownership interest in Blanco River.

1 It is the defendant's contention that under the terms of the
2 promissory note, the Agueda R. Robbie Marital Trust was entitled
3 initially to be repaid the \$250,000.00 plus interest in one year by
4 Blanco River. That payment was guaranteed by Christopher Green.
5 In the event the Agueda R. Robbie Marital Trust elected to assign
6 the balance due on the note in exchange for a 15% equity interest
7 in Blanco River, then plaintiff would not be entitled to repayment
8 of the sums due and owing under the promissory note unless and until
9 the defendant, Blanco River, obtained approval for a loan to
10 purchase the subject property and Blanco River closed the escrow on
11 the purchase of the property and was in a position to use loan
12 proceeds to repay the investment.

13 The parties have agreed that Arizona law applies to claims in
14 this case. The general rules of contract interpretation under
15 Arizona law require that "the ordinary meaning of language be given
16 to words in a contract where circumstances do not show a different
17 meaning as applicable." *Brady vs. Black Mountain Inv. Co.*, 105
18 Ariz. 87, 89 (1969). "A contract must be [reasonably] construed so
19 that every part is given effect, and each section of an agreement
20 must be read in relation to each other to bring harmony, if
21 possible, between all parts of the writing... As a corollary, the
22 court will not construe one provision in a contract so as to render
23 another provision meaningless." *Chandler Medical Bldg. Partners v.*
24 *Chandler Dental Group*, 855 P.2d 787, 791 (Ariz.App. 1993). Arizona
25 law requires the court to reasonably construe a contract "so as to
26 accomplish the intention of the parties." *Harris v. Harris*, 195
27 Ariz. 559, 562 (App. 1999). This court previously determined that
28 the language contained in the promissory note was sufficiently

1 ambiguous to require a trial and to permit extrinsic evidence to be
2 admitted on the question of the intent of the parties with respect
3 to the disputed provisions in the promissory note.

4 A promissory note is a contract and is subject to Arizona's
5 principles of contract interpretation. Under Arizona law a loan is
6 not an equity or ownership interest. *United States vs. Evans*, 375
7 F.2d 730, 731 (9th Cir. 1967). In contrast, stock in a corporation
8 "is an equity, and represents an ownership interest and it is to
9 be distinguished from obligations such as notes or bonds which are
10 not equities and represent no ownership interest. *Id.* The court
11 concludes that an option to convert the note to an ownership
12 interest does not alter the note's fundamental nature as an
13 instrument evidencing indebtedness, and not ownership of a share of
14 a company unless the option is exercised.

15 In the final analysis the court must apply a standard of
16 reasonableness in contract interpretation. *Chandler Medical Bldg.*
17 *Partners*, 855 p.2d at 791.

18 The court concludes that in order to give meaning to all of the
19 provisions of the promissory note, the last sentence of the note is
20 qualified by the other provisions of the last two paragraphs which
21 require an assignment of the outstanding balance of the note before
22 the close of escrow on June 15, 2006 in order for Eda Robbie to
23 acquire an equity interest in Blanco River.

24 On May 22, 2006, Eda Robbie tendered the note to Blanco River
25 in exchange for her obtaining an equity interest in Blanco River.
26 At the trial, Eda Robbie testified that she had acquired an equity
27 interest in Blanco River. This position is consistent with the
28 investments of the other investors who became members of Blanco

1 River on or before June 10, 2006 by signing the operating agreement
2 prior to the June 15, 2006 projected date for closing the escrow.
3 Exhibits 15, 16 and 54 reflect Eda Robbie's intention to surrender
4 the promissory note in exchange for a 15% equity interest in Blanco
5 River.

6 Therefore the court finds and concludes that Eda Robbie
7 assigned a portion of her interest in the promissory note to Blanco
8 River on May 22, 2006. The portion of the note assigned was equal
9 to a 10.437% interest in Blanco River. Once the plaintiff acquired
10 an equity interest by assigning a portion of the note to Blanco
11 River and acquired an equity ownership interest in Blanco River, she
12 surrendered that portion of the note which represented the equity
13 interest that she received in Blanco River. Thereafter, as to that
14 portion of the note she assigned to Blanco River, she was entitled
15 to receive a refund of her investment as were the other investors
16 but only from the proceeds of Blanco River and not as an unsecured
17 holder of a promissory note.

18 Eda Robbie's intent is further reflected by her execution of
19 a K-1 tax form in which she took the position with the Internal
20 Revenue Service that she had invested \$250,000.00 in Blanco River
21 and had become an equity member of Blanco River in exchange for all
22 or a portion of the investment of the \$250,000.00 and that she was
23 therefore entitled to a \$250,000.00 deduction from ordinary income
24 on her tax return.

25 The court specifically finds that the closing, refinancing,
26 sale or assignment of the Maker provision of the note was not a
27 condition precedent to the defendants original obligation to repay
28 the original note. Only following an assignment of the note and

1 exchange for the equity interest did closing of the escrow with
2 sufficient funds to pay off the investors become a condition
3 precedent to the obligation of Blanco River to repay what had been
4 the outstanding balance due on the note. Once that assignment had
5 been made, the right to be repaid was dependent upon assets of
6 Blanco River to make distribution provisions as set forth in
7 paragraph 6.1 of the operating agreement.

8 While the court has concluded that plaintiff assigned a portion
9 of her promissory note to Blanco River, this does not end the
10 inquiry with respect to her entitlement to recover a portion of the
11 promissory note as an unsecured creditor of Blanco River. Plaintiff
12 was entitled to receive a 15% equity interest in Blanco River in
13 exchange for her assignment of the full \$250,000.00, represented by
14 the promissory note, to Blanco River. On June 13, 2006, when Eda
15 Robbie sent the promissory note together with an executed operating
16 agreement to Blanco River, Blanco River only agreed to provide Eda
17 Robbie with a 10.437% equity interest in Blanco River. The
18 defendants Blanco River and Christopher Green consistently
19 maintained that Eda Robbie was only entitled to a 10.437% equity
20 interest in Blanco River in exchange for her interest under the
21 promissory note and that the balance should be distributed to Eda
22 Robbie's stepdaughter, Alison Ruday. This position was a breach of
23 the express terms of the promissory note. On June 13, 2006, Eda
24 Robbie had the option of advising Christopher Green and Blanco River
25 that she was not going to assign all or any portion of her
26 promissory note to Blanco River because they had failed to provide
27 for a 15% equity interest in Blanco River in compliance with the
28 terms of the promissory note and had instead acknowledged her

1 entitlement to only a 10.437% interest. She could have then
2 commenced an action against the defendants on the note as an
3 unsecured creditor. She elected not to do so. Instead she tendered
4 the promissory note along with her renewed request that her 15%
5 equity interest be reflected in the operating agreement. Therefore,
6 the court concludes that Eda Robbie assigned to Blanco River that
7 portion of the promissory note which was equal to a 10.437% equity
8 interest in Blanco River and she acquired an equity ownership
9 interest of 10.437% in Blanco River. The court further finds and
10 concludes that the assignment that Eda Robbie made of her promissory
11 note on June 13, 2006 effectively assigned \$173,950.00 of the
12 \$250,000.00 under the promissory note to Blanco River. In order for
13 her to be repaid the sum of \$173,950.00, she, like all of the other
14 investors, could only be repaid that sum from the new loan proceeds
15 at the close of escrow. Because the escrow failed to close and
16 Blanco River had no assets, all of the investors including
17 plaintiff to the extent of her assignment of the promissory note,
18 lost their investments.

19 The court expressly finds and concludes that the 4.563% equity
20 interest that plaintiff was entitled to receive under the terms of
21 the promissory note which plaintiff did not receive from the
22 defendants is in the sum of \$76,050.00.

23 The \$76,050.00 represents the remaining 4.563% equity interest
24 in Blanco River that Eda Robbie was entitled to receive and did not
25 in accordance with the terms of the promissory note.

26 Therefore, the court finds and concludes that plaintiff is
27 entitled to recover under the first claim for relief of the first
28 amended complaint the sum of \$76,050.00 against the defendant Blanco

1 River and Christopher Green, under his guarantee, as an unsecured
2 creditor of Blanco River together with interest.

3 On the issue of interest, it is a general rule in federal
4 diversity actions that state law determines the rate of prejudgment
5 interest, but post-judgment interest is governed by federal law. 28
6 U.S.C. § 1961; *Citicorp Real Estate v. Smith*, 155 F.3d 1097, 1107-08
7 (9th Cir. 1998). Under Arizona law, "prejudgment interest on a
8 liquidated claim is a matter of right." *Gemstar Ltd. v. Ernst &*
9 *Young*, 185 Ariz. 493, 508 (1996) (en banc). Pursuant to A.R.S. § 44-
10 1201(A), interest "shall be at the rate of ten percent per annum,
11 unless a different rate is contracted for in writing, in which event
12 any rate of interest may be agreed to." A.R.S. § 44-1201(A).

13 The court also finds and concludes that plaintiff pursuant to
14 the assignment of a portion of the promissory note is entitled to
15 a 10.437% equity interest in Blanco River.

16 Plaintiff also seeks to recover against defendants for a breach
17 of the covenant of good faith and fair dealing under the second
18 claim for relief. Under this claim, Eda Robbie contends that
19 Christopher Green misappropriated over \$400,000.00 from Blanco River
20 as reflected in a judgment Blanco River obtained against Christopher
21 Green in the District Court for the Southern District of Texas (Case
22 No. 4:08-cv-02822, Tex. Doc. No. 1). Because this court has
23 determined that plaintiff has a 10.437% ownership interest in Blanco
24 River, she has a beneficial interest in that judgment equal to the
25 amount of the ownership interest she has in Blanco River. As to
26 this amount, the plaintiff is entitled to recover a pro-rata share
27 of any recovery Blanco River makes against Christopher Green.

28 The court finds and concludes that plaintiff is not entitled

1 to any additional relief against Blanco River or Christopher Green
2 on this claim.

3 Finally, plaintiff has failed to prove under her third claim
4 for relief that Blanco River and Christopher Green had no intent to
5 perform under the terms of the promissory note and therefore
6 committed fraud. While the court has found that the defendants
7 breached their contract with plaintiff by only giving her with a
8 10.437% interest in Blanco River instead of the promised 15%,
9 neither defendant committed actionable fraud. The evidence showed
10 that the balance of the 4.563% equity interest was reflected in the
11 operating agreement as owned by Eda Robbie's stepdaughter, Alison
12 Ruday. Neither of the defendants made false representations to Eda
13 Robbie to induce her to invest her trust money with the intent not
14 to perform. In addition, plaintiff has failed to prove that either
15 defendant acted maliciously with an intent to cause injury to Eda
16 Robbie.

17 Therefore based on the foregoing findings of fact and
18 conclusions of law, judgment is entered as follows:

19 1. On plaintiff's first claim for relief, plaintiff is awarded
20 judgment against the defendants Blanco River LLC and Christopher
21 Green in the amount of \$76,050.00 together with interest at the rate
22 of twelve percent (12%) from April 4, 2006 until entry of judgment.
23 Thereafter, the judgment shall bear interest at the statutory rate.

24 Further, plaintiff is entitled to a 10.437% interest in the
25 defendant Blanco River LLC.

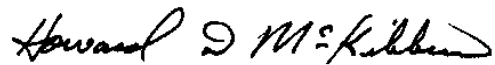
26 2. On plaintiff's second and third claims for relief, the
27 court enters judgment in favor of defendants Blanco River LLC and
28 Christopher Green and against the plaintiff, Agueda R. Robbie,

1 Trustee of the Agueda R. Robbie Marital Trust,

2 3. The promissory note contains an attorney fee provision.
3 Under the court's decision, plaintiff and defendants are prevailing
4 parties under the note. Therefore, either party may file a motion
5 for fees and costs pursuant to Local Rule 54-16. If no motion is
6 filed, the judgment shall provide that each party shall bear their
7 own costs and fees.

8 4. The Clerk of Court shall enter judgment accordingly.

9 Dated this 22nd day of July, 2011.

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12 Howard D. McKibben
13 U.S. Senior District Judge
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